

**BRADLEY/GROMBACHER, LLP**

Marcus J. Bradley, Esq. (SBN 174156)  
Kiley L. Grombacher, Esq. (SBN 245960)  
Taylor L. Emerson, Esq. (SBN 225303)  
2815 Townsgate Road, Suite 130  
Westlake Village, California 91361  
Telephone: (805) 270-7100  
Facsimile: (805) 270-7589  
mbradley@bradleygrombacher.com  
kgrombacher@bradleygrombacher.com  
temerson@bradleygrombacher.com

**ROTHSCHILD & ALWILL, APC**

Kristi D. Rothschild, Esq. (SBN 222727)  
Julian Alwill, Esq. (SBN 259416)  
27 W. Anapamu Street, Suite 289  
Santa Barbara, California 93101  
Telephone: (805) 845-1190  
Facsimile: (805) 456-0132  
krothschild@kdrllawgroup.com  
jalwill@kdrllawgroup.com

Attorneys for Plaintiff

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

ANDREA RIDGELL, on behalf of  
herself and others similarly situated  
Plaintiff,

v.

FRONTIER AIRLINES, INC. a  
Colorado corporation; AIRBUS S.A.S.,  
a foreign corporation doing business in  
the State of California; AIRBUS  
GROUP HQ INC., a corporation doing  
business in the State of California  
Defendants.

**Case No.: 2:18-CV-04916 PA (AFMx)**

**PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR CLASS  
CERTIFICATION**

**DATE: 11/19/18**

**TIME: 1:30 p.m.**

**DEPT: 9A**

**TO THE HONORABLE COURT, ALL INTERESTED PARTIES AND THEIR  
ATTORNEYS OF RECORD:**

PLEASE TAKE NOTICE that on November 19, 2018 at 1:30 p.m. before the Honorable Percy Anderson, in Courtroom 9A of the United States District Court located at 350 West 1st Street, Los Angeles, California, 90012, plaintiff, Andrea Ridgell ("Plaintiff") shall and does move this Court for entry of an Order pursuant to Federal Rule of Civil Procedure 23 (b)(3) certifying proposed classes; appointing Plaintiff's attorneys to serve as class counsel under Rule 23(g); and directing notice to class members under Rule 23(c).

The Motion is made on the accompanying Memorandum of Points and Authorities, the Proposed Order, all other pleadings and papers on file in this action, and all further evidence and argument that may be adduced in connection herewith.

DATED: October 22, 2018

**BRADLEY/GROMBACHER, LLP**

By: /s/ Marcus J. Bradley  
Marcus J. Bradley, Esq.  
Attorneys for Plaintiff

## **MEMORANDUM OF POINTS AND AUTHORITIES**

### **I. INTRODUCTION**

Plaintiff Andrea Ridgell (“Plaintiff”) respectfully submits this Memorandum of Points and Authorities in support of her Motion for Class Certification.

This case arises from “fume” events which occur as the result of the defective design and manufacture of Frontier Airline’s fleet of Airbus aircrafts. Fume events occur when the air inside the passenger cabin of an aircraft becomes contaminated with pyrolised compounds such as engine oil, de-icing or hydraulic fluid. Such events are caused by the “bleed” air system used in Defendants’ aircrafts which draws pre-heated compressed air from the engine and pumps this air straight into the cabin after being cooled. Defendants have repeatedly experienced fume events yet have failed to eliminate the traditional pneumatic system and bleed manifold and instead adopt a no-bleed system whereby electrically driven compressors provide the cabin pressurization function, with fresh air brought onboard via dedicated cabin air inlets. Moreover, Defendants have failed to warn consumers about the dangers of the “bleed” air system.

Such system has caused damage to Plaintiff and other passengers in the form of personal injury and lost money.

Plaintiff alleges the following causes of action on behalf of some or all of the members of the classes outlined above: (1) strict products liability; (2) breach of warranties; (3) negligence; (4) false imprisonment; (5) negligent infliction of emotional distress.

Plaintiff seeks to represent in her own capacity and on behalf of two classes of other Frontier passengers defined as:

#### **Nationwide Class**

All persons in the United States who have flown in one of Defendants’ aircraft that have experienced a bleed air event. Specifically excluded from this Class are Defendants, the officers, directors, or employees of Defendants, any entity in which Defendants have a controlling interest; and any affiliate, legal representative, heir, or assign of Defendants. Also excluded any federal, state, or local governmental entities, any judicial officer presiding over this action and the members of his/her immediate family and judicial staff, and any juror assigned to this action.

**Flight 1630 Class**

All passengers in the United States who were on Frontier Airlines Flight 1630 on June 2, 2017.

**II. STATEMENT OF RELEVANT FACTS****1. Status of Filing and Service**

At present, the pleadings are not settled as to all defendants. Plaintiff filed this action on June 1, 2018. (ECF Dkt . No. 1) Plaintiff served defendant Frontier on or about June 15, 2018. (Id. at ¶ 7.) As a professional courtesy to Frontier, Plaintiff stipulated to provide Frontier an additional thirty-nine (39) days in which to file an answer to the complaint. (Grombacher Decl. at ¶ 8 ECF Dkt No. 11.) Defendant Frontier timely filed an answer to the complaint on August 14, 2018. (Grombacher Decl. at ¶ 8; ECF Dkt No. 15).

Pursuant to Court Order, Plaintiff filed a first amended complaint on October 5, 2018 to clarify jurisdiction. (ECF Dkt No. 33.) Frontier filed an answer to the complaint on October 19, 2018. (ECF Dkt No. 37.)

Plaintiff promptly caused the initiating complaint and supporting documents to be translated into French and, promptly began the process of effectuating service on Defendant Airbus through the processes required by Hague Convention. (Grombacher Decl. at ¶ 12.) The process request has been confirmed received by the Ministry de la Justice in Paris on July 16, 2018 (Grombacher Decl. ¶ 13.) Unfortunately, at present, service upon Airbus has not been fully effectuated. (Id. at ¶ 14.)

**2. LR 23-3 Deadline**

Pursuant to Local Rule 23-3, the deadline for the filing of Plaintiff's motion for class certification was set to fall on September 13, 2018. On August 28, 2018, after meeting and conferring with counsel for Defendant, Plaintiff filed an unopposed ex parte application to vacate this date. [ECF Dkt. No. 18.) Pursuant to Order of this Court, the ex parte application was denied; however, the certification deadline was briefly continued to permit Plaintiff to seek relief by fully noticed motion [ECF Dkt No.; 20].

1 Plaintiff filed a formal motion to continue the class certification filing deadline  
 2 on September 6, 2018. Frontier filed a Notice of Non-Opposition on September 20,  
 3 2018. ECF Dkt. No.24.) The motion was on for hearing before the Court on October 1,  
 4 2018 and was denied (ECF Dkt No. 30.) thereby requiring the filing of the present  
 5 motion.

### 6 **III. Legal Standard**

7 “Class actions have two primary purposes: (1) to accomplish judicial economy  
 8 by avoiding multiple suits, and (2) to protect rights of persons who might not be able to  
 9 present claims on an individual basis.” *Haley v. Medtronic, Inc.*, 169 F.R.D. 643, 647  
 10 (C.D.Cal.1996) (citing *Crown, Cork & Seal Co. v. Parking*, 462 U.S. 345 (1983)).  
 11 Federal Rule of Civil Procedure 23 governs class actions. A class action “may be  
 12 certified if the trial court is satisfied after a rigorous analysis, that the prerequisites of  
 13 Rule 23(a) have been satisfied.” *Gen. Tel. Co. of the Southwest v. Falcon*, 457 U.S. 147,  
 14 161 (1982).

15 To certify a class action, plaintiffs must set forth facts that provide prima facie  
 16 support for the four requirements of Rule 23(a): (1) numerosity; (2) commonality; (3)  
 17 typicality; and (4) adequacy of representation. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S.  
 18 —, —, 131 S.Ct. 2541, 2548 (2011); *Dunleavy v. Nadler (In re Mego Fir. Corp.*  
 19 *Sec. Litig.)*, 213 F.3d 454, 462 (9th Cir.2000). These requirements effectively “limit  
 20 the class claims to those fairly encompassed by the named plaintiff's claims.” *Falcon*,  
 21 457 U.S. at 155 (quoting *Califano v. Yamasaki*, 442, U.S. 682, 701 (1979)).

22 If the Court finds that the action meets the prerequisites of Rule 23(a), the Court  
 23 must then consider whether the class is maintainable under Rule 23(b). *Dukes*, 131 S.Ct.  
 24 at 2548. Rule 23(b)(3) governs cases where monetary relief is the predominant form of  
 25 relief sought, as is the case here. A class is maintainable under Rule 23(b)(3) where  
 26 “questions of law or fact common to the members of the class predominate over any  
 27 questions affecting only individual members,” and where “a class action is superior to  
 28 other available methods for fair and efficient adjudication of the controversy.”

1 Fed.R.Civ.P. 23(b)(3). “The Rule 23(b)(3) predominance inquiry tests whether the  
 2 proposed classes are sufficiently cohesive to warrant adjudication by representation.”  
 3 *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1022 (9th Cir.1998) (citing *Amchem*  
 4 *Products, Inc. v. Windsor*, 521 U.S. 591 (1997)). The predominance inquiry measures  
 5 the relative weight of the common to individualized claims. *Id.* “Implicit in the  
 6 satisfaction of the predominance test is the notion that the adjudication of common  
 7 issues will help achieve judicial economy.” *Zinser v. Accufix Research Inst., Inc.*, 253  
 8 F.3d 1180, 1189 (9th Cir.2001) (citing *Valentino v. Carter–Wallace, Inc.*, 97 F.3d 1227,  
 9 1234 (9th Cir.1996)). In determining superiority, the court must consider the four  
 10 factors of Rule 23(b)(3): (1) the interests members in the class have in individually  
 11 controlling the prosecution or defense of the separate actions; (2) the extent and nature  
 12 of any litigations concerning the controversy already commenced by or against  
 13 members of the class; (3) the desirability or undesirability of concentrating the litigation  
 14 of the claims in the particular forum; and (4) the difficulties likely encountered in the  
 15 management of a class action. *Id.* at 1190–1993. “If the main issues in a case require  
 16 the separate adjudication of each class member's individual claim or defense, a Rule  
 17 23(b)(3) action would be inappropriate.” *Id.* (citing 7A Charles Alan Wright, Arthur R.  
 18 Miller & Mary Kay Kane, *Federal Practice and Procedure* § 1778 at 535–39  
 19 (2d.3d.1986)).

20 More than a pleading standard, Rule 23 requires the party seeking class  
 21 certification to “affirmatively demonstrate ... compliance with the rule—that is he must  
 22 be prepared to prove that there are in fact sufficiently numerous parties, common  
 23 questions of law or fact, etc.” *Dukes*, 131 S.Ct. at 2551. This requires a district court to  
 24 conduct “rigorous analysis” that frequently “will entail some overlap with the merits of  
 25 the plaintiff's underlying claim.” *Id.* Nevertheless, “neither the possibility that a plaintiff  
 26 will be unable to prove his allegations, nor the possibility that the later course of the  
 27 suit might unforeseeably prove the original decision to certify the class wrong, is a basis  
 28 for declining to certify a class.” *Blackie v. Barrack*, 542 F.2d 891, 901 (9th Cir. 1975).

#### IV. ANALYSIS

##### A. Plaintiff Should be Afforded the Opportunity to Conduct Discovery Prior to Certification

Prior to a Rule 23 Motion seeking class certification, the parties are entitled to conduct discovery in order to provide the court with evidence to either support or refute the requested certification. See *Vinole*, 571 F.3d 935 at 942. However, based on the information above, the court concludes that plaintiffs have not been given the opportunity to engage in the necessary class discovery. See *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir. 1975) (“The propriety of a class action cannot be determined in some cases without discovery.”)

Indeed, the Ninth Circuit recently concluded that the bright-line of Local Rule 23-3 is incompatible with Federal Rule of Civil Procedure 23.” *ABS Entm't, Inc. v. CBS Corp.*, 900 F.3d 1113, 1140 (9th Cir. 2018). As the ABS Court explained, “Local Rules cannot be incompatible with Federal Rules. Fed. R. Civ. P. 83(a)(1)”:

Central District of California Local Rule 23-3 sets a strict 90-day time frame from the filing of a complaint to the motion for class action certification. This bright line rule is in direct contrast to the flexibility of the Federal Rule, which calls for a determination on class certification “[a]t an early practicable time after a person sues or is sued as a class representative.” Fed. R. Civ. P. 23(c)(1)(A). That flexible approach makes sense. The class action determination can only be decided after the district court undertakes a “rigorous analysis” of the prerequisites for certification. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350–51, 131 S.Ct. 2541, 180 L.Ed.2d 374 (2011) (quoting *Gen. Tele. Co. of SW v. Falcon*, 457 U.S. 147, 161, 102 S.Ct. 2364, 72 L.Ed.2d 740 (1982) ). To undertake that analysis may require discovery. *Kamm v. Cal. City Dev. Co.*, 509 F.2d 205, 210 (9th Cir.1975) (“The propriety of a class action cannot be determined in some cases without discovery;” “To deny discovery in [such cases] would be an abuse of discretion.”). See Barbara J. Rothstein & Thomas E. Willging, Federal Judicial Center, Managing Class Action Litigation: A Pocket Guide for Judges 9 (3d ed. 2010) (“Considering [Fed. R. Civ. P. 23(c)(1) ], you should feel free to ignore local rules calling for specific time limits; such local rules appear to be inconsistent with the federal rules and, as such, obsolete.”); Federal Judicial Center, Manual for Complex Litigation, Fourth § 21.133 (“Some local rules specify a short period within which the plaintiff must file a motion to certify a class action. Such rules, however, may be inconsistent with Rule 23(c)(1)(A)’s emphasis on the parties’ obligation to present the court with sufficient information to

support an informed decision on certification. Parties need sufficient time to develop an adequate record.”)

Given Plaintiff’s burden at certification, she should be entitled to discovery. Yet the Court has denied such opportunity even as to the most basic Rule 23 requirements (i.e. numerosity). Plaintiff anticipates that she will require the following discovery to prepare her motion:

<b>General Category of Discovery</b>	<b>Relevancy to Claim in Litigation</b>	<b>Relevancy to Rule 23 Factor</b>
Flight Manifest	False Imprisonment; Strict Liability, Failure to Warn	Numerosity; typicality, commonality, predominance <sup>1</sup>
Aircrafts in Frontier’s Fleet (including any modifications or maintenance issues)	Strict Liability; Failure to Warn	Commonality, typicality, predominance
Internal Reports regarding the subject flight	Strict Liability; Failure to Warn	Commonality, typicality, predominance
Aircraft design specs	Strict Liability; Failure to Warn	Commonality, typicality, predominance
Policies and procedures regarding fume events and terminal confinements	False Imprisonment; Failure to Warn	Commonality, typicality, predominance
Facts surrounding the “quarantining” of passengers of the subject flight and reparations made by the airline to passengers as a result of the incident	False Imprisonment	Numerosity, Commonality, typicality, predominance

## **B. The Requirements for Certification Under Federal Rule of Civil Procedure 23 Are Satisfied**

### **a. Numerosity**

Rule 23(a)(1) requires the class to be so numerous that joinder of individual class members is impracticable. See Fed.R.Civ.P. 23(a)(1). Here, the proposed classes are

<sup>1</sup> See e.g. *Wallman v. Tower Air, Inc.*, 189 F.R.D. 566, 568–69 (N.D. Cal. 1999) where plaintiff sought the passenger list in a putative class action so he could contact the passengers as potential witnesses or plaintiffs and “possibly enhance the odds in favor of class certification by proving typicality and numerosity, for example. Plaintiff wishes to investigate whether other passengers had similar experiences to Plaintiff and observed the same actions by Defendant’s employees. This information would tend to show the degree of typicality of Plaintiff as compared with other passengers, which would also be relevant to certification of a plaintiff class.”

1 sufficiently numerous. Here, the members of the class can be ascertained from  
2 Frontier's business records. While the plaintiff does not have formal discovery,  
3 Frontier operates hundreds of flights each day and thus it is clear that the number of  
4 class members can easily extend into the thousands. As to the sub-class, Plaintiff  
5 estimates that there were at least 200 individuals on her flight.

### 6 **b. Commonality**

7 "Commonality requires the plaintiff to demonstrate that the class members have  
8 suffered the same injury ... [and][t]heir claims must depend upon a common contention  
9 ... of such nature that it is capable of classwide resolution—which means that  
10 determination of its truth or falsity will resolve an issue that is central to the validity of  
11 each one of the claims in one stroke." *Dukes*, 131 S.Ct. at 2551 (internal quotation  
12 marks and citations omitted). "What matters to class certification ... is not the raising of  
13 common 'questions'—even in droves—but, rather the capacity of a classwide  
14 proceeding to generate common answers apt to drive the resolution of the litigation."  
15 *Id.*

16 Plaintiff anticipates that discovery will show that Defendant's aircrafts all run on  
17 a "bleed-air" system. Thus, because the design and manufacture are uniform, the  
18 questions underlying the litigation can be resolved "in one stroke." Moreover, answers  
19 to these questions are "central to the validity" of each class member's claims because,  
20 as discussed in more detail in the Court's predominance analysis below, each class  
21 member's claim hinges on (1) whether the design is defective, (2) what information  
22 Frontier knew or had access to regarding the likelihood of fume events, and (3) whether  
23 members of the class were subject to forced and nonconsensual confinement. *Dukes*,  
24 131 S.Ct. at 2551; see section IV.B.1, *infra*.

### 25 **c. Typicality**

26 Typicality measures whether there is a sufficient nexus between the claims of  
27 unnamed representatives and those of the class at large. *Rodriguez v. Hayes*, 591 F.3d  
28 1105, 1124 (9th Cir. 2010). A plaintiff need only possess the same interest and have

suffered the same injury as the other class members. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 984 (9th Cir. 2011). Under these “permissive standards,” representative claims are typical if they are “reasonably co-extensive with those of absent class members.” *Franco v. Ruiz Food Prods., Inc.*, 2012 WL 5941801, at \*6 (E.D. Cal. Nov. 27, 2012) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). Claims need not be identical to be typical. *Id.* Typicality can be satisfied even if factual differences exist between the plaintiff and the other class members. *Rivera v. Bio Engineered Supplements & Nutrition, Inc.*, 2008 WL 4906433, at \*7 (C.D. Cal. Nov. 13, 2008) (holding, “the typicality requirement is not particularly strict”).

Typicality is easily satisfied in this case. Plaintiff’s claim arises from the same practice or course of conduct as other putative class members’ claims—namely, those passengers of Frontier Airlines who experienced “fume” events in the United States (the “Class”). Plaintiff’s claims are also typical on behalf of a subclass of all passengers on Frontier Flight 1630 which departed Los Angeles International Airport on June 2, 2017 (the “California Class”).

#### **d. Adequacy**

To establish adequacy of representation, the issue is whether “the named plaintiffs and their counsel have any conflicts of interest with other class members” and whether “the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the class.” *Hanlon*, 150 F.3d at 1020. Here, the interests of Plaintiff and the members of the proposed classes are fully aligned in determining whether Frontier’s aircrafts are defective in design. See Ridgell Decl. Plaintiff has demonstrated an understanding of the case and has worked with her counsel to prosecute the action. responded to numerous discovery requests and sat for their depositions. Further, Plaintiff retained counsel with significant experience in class action. Bradley Decl. Therefore, the adequacy requirement is met here.

### **2. Rule 23(b) Requirements**

Under Rule 23(b)(3), class certification is appropriate “if Rule 23(a) is satisfied” and if

1 “the court finds that [1] the questions of law or fact common to class members  
 2 predominate over any questions affecting only individual members, and that [2] a class  
 3 action is superior to other available methods for fairly and efficiently adjudicating the  
 4 controversy.” Fed.R.Civ.P. 23(b) (3); *Local Joint Exec. Bd. of Culinary/Bartender*  
 5 *Trust Fund v. Las Vegas Sands, Inc.*, 244 F.3d 1152, 1162–63 (9th Cir.2001).

#### 6 **a. Predominance**

7 The predominance inquiry “trains on legal or factual questions that qualify each  
 8 class member's case as a genuine controversy.” *Amchem Prods, Inc. v. Windsor*, 521  
 9 U.S. 591, 625 (1997). “When one or more of the central issues in the action are common  
 10 to the class and can be said to predominate,” a class action will be considered proper  
 11 “even though other matters will have to be tried separately.” *Gartin v. S & M NuTec*  
 12 *LLC*, 245 F.R.D. 429, 435 (C.D.Cal.2007). “Because no precise test can determine  
 13 whether common issues predominate, the Court must pragmatically assess the entire  
 14 action and the issues involved.” *Romero v. Producers Dairy Foods, Inc.*, 235 F.R.D.  
 15 474, 489 (E.D.Cal.2006). “Implicit in the satisfaction of the predominance test is the  
 16 notion that the adjudication of common issues will help achieve judicial economy.” See  
 17 *Valentino v. Carter–Wallace, Inc.*, 97 F.3d 1227, 1234 (9th Cir.1996). “Predominance  
 18 is a test readily met in certain cases alleging consumer or securities fraud or violations  
 19 of the antitrust laws.” *Amchem*, 521 U.S. at 625.

20 Here, each of the claims can be demonstrated or refuted with common evidence. The  
 21 claims all arise from common facts (i.e. all Frontier aircrafts all operate with the same  
 22 bleed air system; all passengers of Plaintiff's flight were subject to the same  
 23 confinement.)

#### 24 **3. Class Litigation is Superior to Other Methods of Adjudication**

25 Rule 23(b)(3) sets forth four relevant factors for determining whether “a class action is  
 26 superior to other available methods for the fair and efficient adjudication of the  
 27 controversy.” These factors include: (i) the class members' interest in individually  
 28 controlling separate actions; (ii) the extent and nature of any litigation concerning the

1 controversy already begun by or against class members; (iii) the desirability of  
 2 concentrating the litigation in the particular forum; and (iv) the likely difficulties in  
 3 managing a class action. “[C]onsideration of these factors requires the court to focus on  
 4 the efficiency and economy elements of the class action so that cases allowed under  
 5 subdivision (b)(3) are those that can be adjudicated most profitably on a representative  
 6 basis.” *Zinser v. Accufix Research Inst., Inc.*, 253 F.3d 1180, 1190 (9th Cir. 2001)  
 7 (internal quotation marks and citation omitted), amended by 273 F.3d 1266 (9th Cir.  
 8 2011).

9 Here, adjudicating class claims will be significantly less burdensome than if the  
 10 matter were prosecuted individually.” *Menagerie Prods. v. Citysearch*, 2009 WL  
 11 3770668, at \*19 (C.D. Cal. Nov. 9, 2009) (concluding that “it does not appear that any  
 12 members of the class have commenced any other litigation concerning the controversy  
 13 alleged herein” and “concentrating the litigation in this Court will allow it to proceed  
 14 in an efficient manner without risking inconsistent outcomes, and there is no reason to  
 15 think that this is an undesirable forum to litigate these claims”).

16 Further, there are no manageability issues. There is no reason to believe that the  
 17 prosecution of the claims of the putative Class Members in a single class action will  
 18 create more management problems than the alternative (i.e., the prosecution of  
 19 hundreds or thousands of separate lawsuits by each class member).

## 20 **I. CONCLUSION**

21 Based on the foregoing, Plaintiff respectfully requests that this Court grant class  
 22 certification, appoint Plaintiff as class representative and appoint Plaintiff’s counsel as  
 23 class counsel.

24  
 25 DATED: October 22, 2018

**BRADLEY/GROMBACHER, LLP**

26 By: /s/ Marcus J. Bradley  
 27 Marcus J. Bradley, Esq.  
 28 Attorneys for Plaintiff